

Office of the Secretary, Interior

§ 4.273

be determined as if the person convicted never existed, notwithstanding § 4.261.

CUSTODY AND DISTRIBUTION OF ESTATES

§ 4.270 Custody and control of trust estates.

The Superintendent may assume custody or control of all tangible trust personal property of a deceased Indian, and he or she may take such action, including sale thereof, as in his or her judgment is necessary for the benefit of the estate, the heirs, legatees, and devisees, pending entry of the decision provided for in 25 CFR 15.311 or in §§ 4.240, 4.241, or 4.312. All expenses, including expenses of roundup, branding, care, and feeding of livestock, are chargeable against the estate and may be paid from those funds of the deceased that are under the Department's control, or from the proceeds of a sale of the property or a part thereof. If an administrative law judge or BIA deciding official has been assigned to adjudicate the estate, his or her approval is required prior to such payment.

[66 FR 32890, June 18, 2001; 66 FR 33740, June 25, 2001]

§ 4.271 Omitted property.

(a) When, subsequent to the issuance of a decision under § 4.240 or § 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory, the inventory can be modified either administratively by the Commissioner of the Bureau of Indian Affairs or by a modification order prepared by him for the administrative law judge's approval and signature to include such omitted property for distribution pursuant to the original decision. Copies of such modifications shall be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the Commissioner of the Bureau of Indian Affairs shall notify the administrative law judge who shall proceed to hold hearings if necessary and shall issue a decision under § 4.240. The record of any such proceeding shall be lodged with

the title plant designated under § 4.236(b).

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971, as amended at 55 FR 43133, Oct. 26, 1990. Redesignated at 66 FR 32890, June 18, 2001]

§ 4.272 Improperly included property.

(a) When subsequent to a decision under § 4.240 or § 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory shall be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the Agency where the property is located, or by any party in interest.

(b) The administrative law judge shall review the record of the title upon which the modification is to be based, and enter an appropriate decision. If the decision is entered without a hearing, the administrative law judge shall give notice of his action to all parties whose rights are adversely affected allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate the administrative law judge may conduct a hearing at any stage of the modification proceeding. Any such hearing shall be scheduled and conducted in accordance with the rules of this subpart. The administrative law judge shall enter a final decision based on his findings, modifying or refusing to modify the property inventory and his decision shall become final at the end of 60 days from the date it is mailed unless a notice of appeal is filed by an aggrieved party within such period. Notice of entry of the decision shall be given in accordance with § 4.240(b).

(d) A party aggrieved by the administrative law judge's decision may appeal to the Board pursuant to the procedures in §§ 4.310 through 4.323.

(e) The record of all proceedings shall be lodged with the title plant designated under § 4.236(b).

[36 FR 24814, Dec. 23, 1971, as amended at 55 FR 43133, Oct. 26, 1990. Redesignated at 66 FR 32890, June 18, 2001]

§ 4.273 Distribution of estates.

(a) Unless the Superintendent has received a copy of a petition for rehearing filed pursuant to the requirements